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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,535	03/17/2004	Thomas J. Bachinski	12929.1136US01	5668

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EXAMINER

GRAVINI, STEPHEN MICHAEL

ART UNIT PAPER NUMBER

3749

DATE MAILED: 07/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/803,535

Applicant(s)

BACHINSKI ET AL

Examiner

Stephen Gravini

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 13-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-12, drawn to a subcombination apparatus, classified in class 431, subclass 344.
- II. Claims 13-17, drawn to combination apparatus, classified in class 34, subclass 206.
- III. Claims 19-20, drawn to subcombination apparatus, classified in class 431, subclass 103.

The inventions are distinct, each from the other because of the following reasons:

Inventions of group I and groups II & III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, independently claimed invention of group I has separate utility such as solely a stand member and panel member without being limited to the independently claimed group II & III limitation including a gas burner light generating member. See MPEP § 806.05(d).

Inventions of group II and group III are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as

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claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the independently claimed subcombination gas valve in fuel flow communication with the gas burner and a fuel line coupled to the gas valve is not some of the particular limitations found in the independently claimed combination. The subcombination has separate utility such as fuel flow cylindrical shape container which is considered separate from the independently claimed combination.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Newly submitted claims 13-20 are directed to an invention that is independent or distinct from the invention originally claimed for the reasons set forth above.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 13-20 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 103

Claims 1-6, 9 and 12 are rejected under 35 U.S.C. 102(b) as being unpatentable over Bader (US 1,042,750) in view of Locke (US 3,590,806). Bader discloses and assembly comprising:

a stand member **1** having a recessed portion sized to receive a fuel container, the recessed portion being accessible through an opening in a sidewall of the stand member;

a panel member **13** coupled to the stand member and movable between a closed position covering the opening and an open position wherein the opening is accessible for inserting the fuel container into the recessed portion or removing the fuel container from the recessed portion. Bader is considered to disclose the claimed invention except for the claimed vertically movable panel member. Locke, another gas assembly, is considered to disclose a vertically movable panel member at column 2 lines 2-6 and shown in figure 3. It would have been obvious to one skilled in the art to combine the teachings of Bader, with the vertically movable panel member, considered disclosed in Locke, for the purpose of allowing opening of the housing to allow access to gas cartridges.

Claims 7-8 and 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bader in view of Locke in further view of Reese (US 3,721,516). Bader in view of Locke is considered to obviate the claimed invention, as discussed above, except for the claimed portable member, circumferential panel member extension, and gas valve housing member. Reese, another gas light assembly, is considered to disclose a portable member, circumferential panel member extension, and gas valve housing member at column 1 line 65 through column 2 line 62. It would have been obvious to one skilled in the art to combine the teachings of Bader in view of Locke with the portable member, circumferential panel member extension, and gas valve housing

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member, considered disclosed in Reese, for the purpose of facilitating moving of the lamp, allowing a telescoping ornamental design and function, and flow control valve coupling respectively.

Response to Arguments

Applicants' arguments with respect to claims 1-12 have been considered but are moot in view of the new grounds of rejection.

Conclusion

Applicants' amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gravini whose telephone number is 571 272

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4875. The examiner can normally be reached on normal weekday business hours (east coast time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica S. Carter can be reached on 571 272 4475. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SMG
July 20, 2005

A handwritten signature in cursive script, appearing to read "Stephen Thorne".